

Thank you for selecting Broadview Networks as your provider of presubscribed interstate interexchange and/or international long distance services (“Service”). The term “Service” also includes any additional features and services you may purchase. By using your Service, you agree to these terms and conditions (“Agreement”). If you do not agree please call Broadview Networks promptly at 1-800-260-8766 to cancel your Service.

Broadview Networks tariffs (“Tariffs”) on file at the Federal Communications Commission (“FCC”) governed the rates, terms and conditions of Broadview Networks provisioning of domestic interstate interexchange and international services, if any, to you. As of July 31, 2001, the portions of the Tariffs governing domestic interstate interexchange and international services have been cancelled, and thereafter Broadview Networks has substituted new schedules (“Rate and Service Schedules”) for the cancelled portion of the Tariffs. These Rate and Service Schedules contain certain information previously set forth in Tariffs and are available on the Broadview Networks website ([www.broadviewnetworks.com](http://www.broadviewnetworks.com)), under “Customer Service” and at the Broadview Networks headquarters (800 Westchester Ave., Suite N501 Rye Brook NY, 10573), during normal business hours.

This agreement incorporates by reference the Rate and Service Schedules, which Broadview Networks may modify from time to time in accordance with law. Capitalized terms not defined herein are defined in the Rate and Service Schedules. The Rate and Service Schedules shall incorporate or be deemed to incorporate the applicable provisions of the Tariffs in effect immediately prior to the cancellation of those portions of the Tariffs. Tariffs for intrastate (local and in-state long distance) services are not effected by this requirement and will remain in effect and on file at the FCC and various state regulatory commissions.

### **Service Usage**

You are responsible for all usage and associated fees for the Service, whether or not you have authorized such usage. This Service is provided only for your use, and you may not resell, assign, or transfer your rights associated with the Service without prior written consent from Broadview Networks; however, service furnished by Broadview Networks may be used for the transmission of communications by you or someone that you authorize to use your Service.

### **Restriction on Use of Service**

You may not use the Service in a manner that violates federal, state or local laws and rules, or in a manner that interferes or could interfere with services provided to others or that could harm the Broadview Networks facilities. If Broadview Networks has reason to suspect unlawful use, abuse, fraudulent usage, interference or actual or anticipated non-payment in connection with the Service or the Service network, Broadview Networks may immediately, without notice or liability, deactivate or terminate the Service. If you suspect fraudulent or unlawful use of your Service, please contact Broadview Networks

immediately at 1-800-260-8766. Broadview Networks may temporarily refuse, limit, interrupt, or curtail your Service as necessary.

#### **Warranty**

THERE ARE NO WARRANTIES FOR THE SERVICE, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **Liability**

Broadview Networks makes no representations and does not assume any legal liability or responsibility for the content, accuracy, completeness, or usefulness of any messages sent or received via the Service. Broadview Networks will not be responsible for any loss or damages arising out of the use of the Service, including damages resulting from personal injuries, death, or property damage. **NEITHER BROADVIEW NETWORKS NOR ITS SUPPLIERS OF EQUIPMENT, AGENTS OR AUTHORIZED DISTRIBUTORS OF SERVICE ARE LIABLE FOR ANY LOSS OR DAMAGE WHATSOEVER RESULTING FROM MISTAKES, FAILURE TO REACH 911, NETWORK FAILURE, UNAUTHORIZED ACCESS TO DATA, FILES OR EQUIPMENT, INTERRUPTIONS IN SERVICE OR DELAYS IN TRANSMISSION. IN NO EVENT SHALL YOU HAVE ANY RIGHT TO RECOVER FROM BROADVIEW NETWORKS, OR ITS EQUIPMENT OR SERVICE PROVIDERS, AGENTS OR AUTHORIZED DISTRIBUTORS ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUE, EVEN IF BROADVIEW NETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Broadview Networks liability for direct damages arising out of any additions, omissions, interruptions, delays, mistakes, errors, or defects in the transmission occurring in the course of furnishing the Service or facilities shall in no event exceed an amount that is equivalent to the charge for the Service during the period in which the fault in transmission occurs. Broadview Networks is not liable for any defacement of or damage to a customer's premises resulting from the furnishing of Service or the installation or removal of facilities and equipment, when such defacement or damage is not the result of negligence by Broadview Networks. If such defacement or damage is the result of Broadview Networks negligence, in no event will Broadview Networks be liable for more than direct damage.

Broadview Networks shall not be liable for any failure to perform its obligations under this Agreement due to any cause or causes beyond its reasonable control, as determined by Broadview Networks. Broadview Networks shall be entitled to take and shall have no liability whatsoever for any action as deemed necessary by Broadview Networks to bring the Service or its practices into conformity with any rules, regulations, orders, decisions, or directives of the FCC or other governmental agency.

#### **Indemnification**

Broadview Networks is not responsible for any third party claims relating to or arising out of use of the Service. Except for gross negligence or willful misconduct by

Broadview Networks, you agree to reimburse Broadview Networks for all cost and expenses, including attorney fees, relating to any such third party claims.

### **Broadview Networks Service and Features**

Broadview Networks Service will allow you to complete calls between locations specified in the Rate and Service Schedules, subject to limitations and qualifications contained therein. Subject to the terms of this Agreement and the Rate and Service Schedules, Service is provided on a monthly basis, twenty-four (24) hours a day.

### **Disputes**

You agree that any disputes that cannot be settled informally will be resolved by arbitration using the rules of the American Arbitration Association. Before initiating or participating in any arbitration proceeding concerning any aspect of this Agreement, you agree that you will attempt to resolve any disputes that arise between you and Broadview Networks informally by providing Broadview Networks with written or oral (by calling 1-800-260-8766) notice and a brief explanation of your concern. You agree to give Broadview Networks at least thirty (30) days (from the time you first notify the company) to resolve the dispute. If arbitration is required, the arbitration will be conducted by a single arbitrator engaged in the practice of law. Unless you and Broadview Networks agree otherwise, arbitrations will be decided solely on the basis of written submissions by you and Broadview Networks including relevant documents, to the arbitrator, unless the arbitrator requires otherwise. The arbitrator's decision and award will be final and binding and may be entered in any court with jurisdiction. The Federal Arbitration Act, not state law, shall govern the arbitrability of all claims. You agree to keep the results of any such arbitration confidential. Notwithstanding the foregoing, you continue to have the right to seek relief through an appropriate federal or state regulatory agency, but you agree that you will not join or participate in any class-wide action relating to the Services.

### **Interruptions**

Allowances for interruptions shall be granted upon request and at the sole discretion of Broadview Networks.

### **Changes to Terms and Conditions**

Broadview Networks reserves the right to modify the charges, terms and conditions under which the Service is provided by posting material changes to the Rate and Service Schedules on our website and/or by providing notifications via the customer's monthly bill. Broadview Networks may also choose, in its sole and complete discretion, to provide an additional notice such as print advisories in newspapers. Use of the Service will constitute acceptance of any new rates, terms or conditions stated in the Rate and Service Schedules. You are free to terminate your service at any time in the event of a change in the Rate and Service Schedules unless otherwise provided.

### **Eligibility, Credit Check and Security Deposits**

Your credit history may require you to pay a security deposit before activation of your Service. Security deposits must be cash, credit card, or certified funds. Unless otherwise determined by Broadview Networks or required by law, no interest shall accrue for the benefit of the customer for any such security deposit. Security deposits will be held in your account until you have established twelve (12) consecutive months of satisfactory payment history, at which time a credit will be issued to your account. Deposits may be refunded or credited to you at any time by Broadview Networks.

### **Service Plans, Charges and Billing**

Services shall be automatically provided and billed on a monthly basis until terminated by Broadview Networks or by you. Broadview Networks may periodically discontinue certain Services, subject to applicable law. You must notify Broadview Networks promptly of any change in your billing address.

The Service Plan ("Service Plan") you select determines your monthly rate and applies to calls you initiate. Some Service Plans have monthly fees or minimum monthly charges. At any time, you can call Broadview Networks at 1-800-260-8766 for further details about your Service Plan.

Usage charges are billed after each usage cycle, unless otherwise specified in the Rate and Service Schedules. Minimum usage charges and monthly recurring charges may be billed in advance or in arrears, depending upon the Service Plan selected by you. Non-recurring charges are payable when the Service Plan for which they are specified has been ordered.

All charges stated in the Rate and Service Schedules are computed by Broadview Networks exclusive of any federal, state, local, use, excise, gross receipts, sales or privilege taxes, other taxes, universal service fees, duties, fees or other similar obligations imposed now or in the future. You agree to pay such taxes, fees, surcharges, duties and obligations, in addition to other rates and charges set forth in the Rate and Service Schedules. You also agree to pay any additional amounts associated with government programs that Broadview Networks is required or permitted to collect from its customers. Customers who place certain types of calls from pay telephones (calling card calls, prepaid calling card calls, toll-free calls, and calls placed using a carrier access code) will incur an additional pay phone use charge.

### **Payments**

You are responsible for payment of all charges for use of Service furnished by Broadview Networks pursuant to this Agreement, regardless of whether such use was authorized by you. You agree to pay Broadview Networks for all charges billed as a result of any use of your authorization code, whether such use is by you or by a third party in connection with a lost, stolen or misappropriated authorization code or otherwise. It is your responsibility to notify Broadview Networks if your authorization code has been stolen or lost. Broadview Networks is not liable for any damages, including toll charges, you may incur as a result of the unauthorized use of your telephone.

Billing will be payable upon receipt. Amounts not paid within thirty (30) days after the invoice is rendered will be considered past due. Interest on the amount due at the rate of one and one-half percent (1.5%) per month (unless a lower rate is prescribed by law, in which event at the highest rate allowed by law) may accrue upon any unpaid amount commencing five (5) days after the date the payment is past due. Checks returned to Broadview Networks will incur a return charge fee of \$35 (unless a lower fee has been prescribed by law, in which event the charge will be equal to such lower fee) which will be added to your Service account. Claims for any errors in billing or service quality must be made by you in writing within thirty (30) days of your receiving the invoice giving rise to the claim. Broadview Networks may make adjustments to charges calculated in error.

#### **Severability**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, in any respect, the remaining provisions will not be affected as long as the parties' basic intent under this Agreement can be achieved.

#### **Governing Law**

This Agreement is governed by the laws of the State of New York without regard to its choice of law provisions.

#### **Entire Agreement**

This Agreement, including the Rate and Service Schedules, sets forth all of the terms and conditions concerning the Services. This agreement supercedes all prior agreements, discussions, representations, or other statements by you or Broadview Networks, whether orally or in writing, relating to the Services. Neither you nor Broadview Networks will be bound by any representations or statements made by any person relating to the Service which is not contained in this Agreement. If there is any conflict between this Agreement and the Rate and Service Schedules this Agreement will govern.